



# Employer *Bulletin*

Employer Communication Center (608) 264-7900 Toll Free: 1-888-681-3952 <http://etf.wi.gov>

## Thinking About Hiring or Rehiring a WRS Annuitant?

Whether caused by the increase in “baby boomers” nearing retirement age, legislative concerns or members who delayed retirement because of 2008’s economic downturn, the Department of Employee Trust Funds (ETF) is taking in record numbers of requests for retirement estimates and retirement applications. As a result, some Wisconsin Retirement System (WRS) employers may need to recruit new staff, some of whom could be WRS annuitants. Some employers may even recruit the services of their own retired employees.

The intent of this *Bulletin* is to remind employers of the requirements related to rehiring WRS annuitants and that some kinds of agreements (including school district emeritus programs) may conflict with Wisconsin Administrative Code section ETF 10.08.

When hiring or rehiring a WRS annuitant, you must ensure you are complying with state statutes and administrative code provisions. To do otherwise may risk invalidating the WRS benefit of the annuitant being hired.

Prior to receiving a WRS annuity and subsequently returning to WRS-eligible employment, annuitants must:

1. meet all conditions of a valid termination, as set forth in Wis. Admin Code ETF 10.08 (2)  
**and**
2. fulfill a minimum break in service as set forth in Wis. Stat. § 40.23 (1) (a) 1.

It is essential that you become familiar with WRS rules governing participation and coverage to ensure accurate reporting and to avoid any potentially negative effects on an employee’s benefits. The guidelines outlined below will help you evaluate whether all requirements of a valid termination and minimum break in service have been satisfied and outlines the possible consequences if these conditions are not met.

## Required Conditions of a Valid Termination

A valid termination is defined in Wisconsin Administrative Code section ETF 10.08. A termination must be valid for an employee to receive a WRS benefit (including retirement annuities, lump sum retirement benefits, and separation benefits). The required conditions are:

- The employee ceases to render compensable services. **Note:** “Compensable” refers not only to wages, but also includes contributions to a section 457, 403(b), 401(k), or any other Internal Revenue Code retirement savings account—as well as any other item of value.
- The employee and employer comply with the employer’s policies for voluntary termination.
- As of the termination date, the employer has no rights to any future services to be rendered by the employee that meet the qualifications for WRS coverage for which compensation has or will

be paid. **Note:** This restriction includes “emeritus” programs where compensation in any form is a condition for future services. Entering into an emeritus agreement with a retiring employee prior to their termination, regardless of the number of future work hours expected, may violate ETF 10.08 and result in termination of the employee’s WRS benefit. **No agreement for future services can be entered into prior to the employee’s termination. School districts or other employers seeking to establish such programs need to wait until after the employee terminates before entering into such agreements.**

Under the rule:

- There cannot be an enforceable agreement as of the termination date for any future WRS compensable employment with the same WRS employer, regardless of whether that employment would meet WRS participation standards.
- There cannot be an enforceable agreement as of the termination date for future employment with a different WRS employer that would meet WRS participation standards.
- The employee is treated consistently with the status of a former employee.
- The terminated employee has no authority to act as a representative of the employer or exercise any authority/control over employees of the employer except as provided above.
- The employer has paid the employee any accumulated benefits that are customarily paid to employees at the time of termination.

**Note:** Contracts or agreements for WRS employment entered into during the minimum break in service period bring into question whether the termination was done in “good faith.” To ensure compliance with section 401(a) of the federal Internal Revenue Code (IRC), ETF may investigate situations where it appears a contract or agreement was entered into during the minimum break in service period.

## Required Minimum Break in Service

The required minimum break in service is reflected in Wis. Stat. § 40.23 (1) (a) 1. Employees who terminate WRS-covered employment are ineligible for any benefit (including retirement annuities, lump-sum retirement benefits, and separation benefits) if they return to WRS-eligible employment before the **latest** of the following dates:

- The day after the annuity effective date.
- The 31st day after termination of participating employment.
- The 31st day after ETF receives the benefit application.

**Note:** The employee’s annuity or lump-sum benefit will be canceled if a return to WRS-eligible employment occurs before this required break in service is met.

## Consequences of Required Conditions Not Being Met

If the minimum break in service or any required condition of a valid termination is not met, the termination is not in good faith and the member is potentially ineligible for their benefits.

ETF may investigate the termination of any WRS employee to ensure compliance with IRC § 401(a). The burden of demonstrating that a termination was in good faith, and that all termination requirements were met, will fall on the employer and rehired employee. An ETF determination that the conditions of a good faith termination or minimum break in service were not met will have the following effect on the employer and employee:

- Any retirement or separation benefit will be considered paid in error. If the rehired annuitant is receiving a monthly retirement benefit, the monthly payment will be discontinued, the rehired annuitant's WRS account will be re-established, and ETF will collect monthly payments paid in error. ETF will also collect any lump sum retirement and separation benefits paid in error.
- The employer must reverse the termination reported, and report the hours of service and the earnings that would have been reported had the termination not been reported. If the termination occurred in a prior calendar year, ETF will assess interest on the contributions due if the earnings adjustment is not part of the current processing year.
- Other ETF-administered benefits (e.g., health, life, and income continuation insurance) may also be affected and, in some cases, insurance coverage may be lost.

## Summary

Additional information regarding rehired annuitants can be found in Chapters 14 and 15 of the *WRS Administration Manual* (ET-1127). This manual can be found on the ETF Internet site at <http://etf.wi.gov> under the "Employer" tab.

For questions regarding this *Employer Bulletin*, please contact the Employer Communication Center toll free at (888) 681-3952 or locally at (608) 264-7900.

This *Employer Bulletin* is published by the Wisconsin Department of Employee Trust Funds. Questions should be directed to contact persons listed in the *Bulletin*, or to the Division of Retirement Services (DRS). Employer agents may copy this *Bulletin* for further distribution to other payroll offices, sub-units or individuals who may need the information. Back copies of the *Employer Bulletins* are available on our Internet site at the following URL: <http://etf.wi.gov/employers.htm>. Wisconsin Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931; <http://etf.wi.gov>.